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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-fifth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 33rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 25 August 1993, at 3 p.m.

Chairman: Mr. AL-KHASAWNEH

later: Mr. YIMER

CONTENTS

Discrimination against indigenous peoples

* The summary record of the second part of the meeting appears as document E/CN.4/Sub.2/1993/SR.33/Add.1.

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GE.93-85243 (E)

The meeting was called to order at 3.20 p.m.

DISCRIMINATION AGAINST INDIGENOUS PEOPLES (agenda item 14)
(E/CN.4/Sub.2/1993/26, 28 and 29; E/CN.4/Sub.2/1993/NGO/4, 6, 13, 20 and 21)

1. Ms. DAES (Chairperson-Rapporteur of the Working Group on Indigenous Populations) said that she wished to express her profound distress upon learning that 30 Yanomami Indians had been massacred by gold prospectors in the State of Roraima in northern Brazil. The Sub-Commission and non-governmental organizations had made every effort to guarantee the protection of those Indians and their chief, David Yanomami, had one month ago appealed to the Working Group to help ensure the survival of his people. She sincerely hoped that the Brazilian Government would promptly apply the special measures it had adopted so as to protect the Yanomami Indians and punish those responsible for the massacre. She was also very concerned about similar atrocities that had just occurred in Peru.

2. Introducing the report of the Working Group on Indigenous Populations on its eleventh session (E/CN.4/Sub.2/1993/29), she paid tribute to her colleagues in the Working Group, Ms. Attah, Mr. Alfonso Martínez, Mr. Boutkevitch and Mr. Hatano, and to all the observers for Governments, the representatives of United Nations organizations and specialized agencies, such as the International Labour Organisation (ILO), indigenous organizations and non-governmental organizations and all the experts and scholars who had contributed so greatly to the success of the eleventh session. She also wished to thank the members of the Board of Trustees of the United Nations Voluntary Fund for Indigenous Populations, who had enabled indigenous populations to participate for the first time in the work of the Working Group, and all the Governments and non-governmental organizations which had contributed to the Fund to that end. The success of the Working Group's efforts depended on the quality and diversity of information provided to it and it was relevant in that connection to emphasize the importance of the contribution made by the representatives of indigenous populations.

3. The Working Group's eleventh session had been especially important because it had been held at the mid-point of the International Year of the World's Indigenous People. The Group had thus been able to take stock of what had been accomplished over the past months and to determine what had yet to be done to ensure that the Year would be successful and would lead to the adoption of a comprehensive United Nations agenda for indigenous peoples. The eleventh session had also been very arduous because the Working Group had had to complete the draft declaration on the rights of indigenous peoples. The text was now before the Sub-Commission and it was for the Working Group to make sure that indigenous representatives participated fully in the discussions and to mobilize the necessary support for that new United Nations instrument, which was of vital importance to the world's indigenous peoples. She would revert to the question of the draft declaration when the Sub-Commission came to consider the draft resolution on that matter. In the meantime, she wished to call the Sub-Commission's attention to the conclusions and recommendations contained in chapter X of the report, in particular section A, and to document E/CN.4/Sub.2/AC.4/1993/CRP.4, a revised version of working paper E/CN.4/Sub.2/1993/26 that she had drafted in application of the relevant resolution of the Commission on Human Rights.

4. Chapter III of the Working Group's report, containing a review of developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous populations, indicated that, unfortunately, those rights continued to be violated in many countries. Nevertheless, some Governments had expressed their willingness to cooperate with indigenous populations to improve their living conditions and several initiatives in that direction had been announced. She hoped that those Governments would fulfil their commitments and that any efforts in that area would be carried out in full partnership with indigenous peoples. Since there had been considerable speculation about the Working Group's future, she wished to make clear that it would hold its twelfth session in 1994 and would continue to meet every year, unless the Economic and Social Council decided otherwise. The Commission on Human Rights had been requested to review the Working Group's mandate at its next session in early 1994, and more precisely the tasks assigned to the Group, which did not call into question its existence as a United Nations body. Extremely interesting suggestions regarding the future role of the Working Group had been made by indigenous representatives and Governments. Furthermore, the World Conference on Human Rights had recommended that a permanent body should be set up within the United Nations for issues pertaining to indigenous peoples. Those recommendations and the fact that the General Assembly would most likely declare an international decade highlighted the importance of giving careful consideration to the structures and mechanisms which could be established to ensure that indigenous peoples took their rightful place in the international community and the family of nations and peoples. She hoped that the Sub-Commission would give due consideration to the conclusions and recommendations contained in the Working Group's report. She would be glad to answer any questions that might arise and reserved the right to take the floor again under the present agenda item.

5. Ms. AULA (France-Libertés - Fondation Danielle Mitterand) said that she wished to call the Sub-Commission's attention to the situation of the Mayans, who had for centuries suffered racial discrimination in Guatemala. The Constitution of Guatemala in force since 1986 recognized the cultural identity of the Mayans on the basis of their language, traditions and forms of social organization, and their right to own communal land, yet, in actual practice the Mayans lived under de facto apartheid which could be addressed only by profound structural reforms. According to the report on that issue (E/CN.4/1993/10) presented by Mr. Tomuschat to the Commission on Human Rights at its most recent session, Mayans, who accounted for 70 per cent of the country's population, lived for the most part in rural areas under conditions of poverty, at times extreme. They were, moreover, the main victims of the numerous human rights violations committed by the armed forces and security forces in recent years. Even though they had not been accorded representation in State institutions, the Mayans had always been known in Guatemala for their high level of awareness and their ability to present a united front against, inter alia, the civilian self-defence patrols, the militarization of the State and society, and their forcible recruitment into the army. When the former Human Rights Procurator, Mr. Ramiro de León Carpio, who had been an active supporter of many of the requests from indigenous organizations and had spoken out in favour of dismantling the civilian self-defence patrols and halting forcible recruitment had become President of the Republic, many hopes had been raised only to be quickly dashed when concrete measures in that respect had failed to materialize and when, following armed aggression committed by those

patrols on 3 August 1993 against participants in a protest march by the indigenous population of Colotenango, the President had declared that the patrols would remain as long as the domestic armed conflict lasted.

6. Indigenous organizations had always insisted on the need to resume the negotiations between the Government and the Army and between the Government and UNRG and to sign as soon as possible a comprehensive agreement providing for the establishment of a truth commission. The Mayan Council, under which most of those organizations were grouped, had drafted a document which dealt specifically with the situation of the Mayans and which had been presented by the Conciliator, Mgr. Quezada Toruño, to the parties involved. The Sub-Commission should accord the necessary attention to the proposals and demands of the Mayan people, which had, moreover, been presented by Ms. Rigoberta Menchu herself, who had condemned the serious violations of the human rights and fundamental freedoms of the indigenous peoples of Guatemala and had urged the Government of that country to implement the recommendations contained in Mr. Tomuschat's report.

7. Ms. BATZIVAL (International Federation of Human Rights) said that the objectives fixed by the United Nations for the International Year of the World's Indigenous People had not been achieved and it was therefore imperative to implement the recommendation of the Vienna Conference concerning the proclamation by the General Assembly of a decade of indigenous people. She hoped that the Sub-Commission would take the necessary steps to that end. In her organization's view, the draft declaration on the rights of indigenous peoples must be broader in scope than International Labour Organisation Convention No. 169. It should be drafted in the spirit of General Assembly resolution 41/120 and clearly acknowledge the culture, philosophy, languages, conception of the world and legal systems of indigenous peoples. It was on the basis of that declaration that Governments would be elaborating their policies with regard to indigenous peoples. Accordingly, indigenous organizations should be afforded an opportunity to participate in the work of any United Nations body that would be considering the draft declaration. The International Federation urged the Sub-Commission to make a concrete proposal to that effect to its higher bodies.

8. With regard to the situation of the Mayan people in Guatemala, it had to be admitted that, despite good intentions, not one of the Governments that had come to power in Guatemala had actually taken any concrete steps to respond to the aspirations of the Mayan people. President Ramiro León de Carpio's announcement that the country's production system would be transformed as a way to combat poverty was a matter of serious concern because it meant that non-traditional crops would be replacing corn, which was sacred to the Mayans. Those measures had been decided without consulting the Mayan people. The Mayans had always worked to preserve their identity and their spiritual and cultural dignity and it was to them that the Guatemalan leaders should turn first in their efforts to preserve the Mayan heritage, rather than to UNESCO. It was time for the Government to listen not only to non-governmental organizations but also to Mayan organizations so as to put an end to the de facto apartheid in Guatemala. If the Government was sincere, it should begin by eliminating racist acts and practices; putting an end to the forcible and discriminatory recruitment of indigenous persons by the army; dismantling the civilian self-defence patrols; pursuing peace negotiations; removing the

causes of the conflict and, in so doing, ending the armed confrontation between brothers. The International Federation hoped that concrete measures based on the commitments made by the Government would mark the beginning of a break with the military.

9. Ms. COTTIER (Indigenous World Association) said that she wished to thank all those who had for years been working to give a voice to indigenous peoples and whose efforts had culminated in the elaboration of the draft declaration on the rights of those peoples, which was nearing completion. She paid tribute in particular to the Working Group on Indigenous Populations, the Sub-Commission and the Commission on Human Rights for the work they had accomplished. She especially thanked Ms. Daes, who had stressed the need to ensure the participation of indigenous peoples in their work, and expressed her gratitude to all the non-governmental organizations and to the international community for their support.

10. The draft declaration on the rights of indigenous peoples, in its present form, gave rise to some concern. The expression "free and informed consent" should be more clearly defined, for indigenous peoples had sometimes been forced to leave their lands or to exploit resources of those lands to escape from extreme poverty. As to compensation, reference should be made to "just and fair compensation at current rates", namely, the current value of the land which had been taken from them. Furthermore, legal jurisdiction was an essential adjunct to political, social and cultural development and should be mentioned expressly in the various provisions of the draft declaration. Restrictive language such as "in accordance with traditions and customs" or "appropriate to their cultural methods" perpetuated colonial attempts to prevent indigenous peoples from adapting to new technology. The expression "if they so choose", contained in some of the draft articles, implied that individuals might or might not choose to exercise a right and it should therefore be eliminated.

11. To promote the rights of indigenous peoples, her organization proposed the following: the draft declaration should reflect the desires of indigenous peoples to exercise all their rights, including legal rights; a technical study of the draft declaration should be carried out by a team to include representatives of indigenous organizations; a commission with a permanent secretariat should be established to meet annually to monitor the exercise of the rights of indigenous peoples; the Working Group on Indigenous Populations should become a permanent body; the word "populations" contained in the Group's title should be replaced by "peoples"; the Working Group should be financed under the United Nations regular budget to ensure implementation of the mandates provided for under the declaration; the General Assembly should declare a decade of indigenous people; an ombudsman should be appointed to monitor the implementation and effectiveness of national policies pertaining to indigenous peoples; a study should be carried out on ways to remedy situations of extreme cultural deprivation in indigenous communities; a process for resolving disputes between indigenous peoples and nations and States Members of the United Nations should be established immediately; and the United Nations should monitor the implementation of the declaration through a high-level body in which indigenous populations would be directly represented.

12. Mr. SABOIA said that he shared the regrets expressed by Ms. Daes about the events in Brazil and was convinced that the Brazilian Government would act rapidly to implement the decisions it had taken with a view to resolving that matter and punishing those responsible.

13. The Working Group on Indigenous Populations had always played a major role in promoting the rights of indigenous peoples, establishing standards in that field and evaluating the current situation of those populations. He had always been in favour of elaborating a declaration to ensure the rights of indigenous peoples, to preserve their cultural, social and economic identity and to close the gap between those peoples and the societies in which they lived. He would point out that universality and equality were the two basic principles to bear in mind in any consideration of human rights issues and that those principles had been reaffirmed in the Vienna Declaration. Undeniably, specific measures were needed for groups which had long been subjected to discrimination and oppression and for the elaboration of the norms necessary to rectify existing inequities in that area. Moreover, while it was true that the right of certain individuals or groups, whether indigenous peoples or minorities, to be different had to be protected, that principle should not be taken to the extreme where difference was fostered simply for its own sake. Yet, that was exactly the impression conveyed in some respects by the draft declaration submitted to the Sub-Commission. For example, in article 4, indigenous peoples had the right not only to maintain but also to strengthen their distinct characteristics as well as their legal systems, while retaining their right to participate fully, if they so chose, in the life of the State. In other words, indigenous peoples would have the right to strengthen their differences in relation to State institutions yet maintain their right to participate in those institutions, which seemed somewhat ambiguous.

14. Similarly, article 17 was rather utopian because States might not have the resources to ensure its application, on the basis of equality, not only to indigenous peoples but also to other societal groups. The same difficulty arose with regard to article 22, the application of which would require huge efforts, particularly by the developing countries, already burdened by many difficulties in those areas. The right of indigenous peoples to recognition of their laws, traditions and customs, and land-tenure systems, as set forth in article 26, was clearly undeniable and was guaranteed, for example, under the Brazilian Constitution. Nevertheless, one might well ask whether, under such conditions, a State could maintain its right to keep a check on those territories and whether indeed it might not lead to claims for self-determination. Under article 32, indigenous peoples had the collective right to determine their own citizenship, which did not impair their right to obtain the citizenship of the State in which they lived. The question of citizenship, one of the most important issues for any State, was a potential source of conflict in that situation. Once again, prudence was called for and it was important, as Mr. Eide had emphasized in his report (E/CN.4/Sub.2/1993/34), to distinguish carefully between the justified and unjustified claims of various groups in order to avoid inciting groups that were on good terms with the rest of society in their State to demand independence.

15. Ms. Daes had endeavoured to clarify those points in document E/CN.4/Sub.2/1993/26/Add.1, in which she had raised pertinent questions that deserved to be examined. He nevertheless feared that, after her careful remarks on the absence of a legal definition of the word "peoples" and the lack of rules or principles governing its application to indigenous populations and on the difficulty of determining the legitimacy of aspirations to self-determination, Ms. Daes had been carried away by her commitment to the cause of indigenous peoples, going so far as to affirm that indigenous groups constituted peoples in every meaning of the term and to speak, in paragraph 13, of "the right of indigenous peoples to self-determination". While acknowledging the need to recognize and protect the rights of indigenous peoples within the framework of a declaration, he considered that a great deal remained to be done before the text could be considered as being in conformity with the principles of universality and equality and striking a proper balance between the interests of the various members of society.

16. Mr. BOELE (International Federation for the Protection of the Rights of Ethnic, Religious, Linguistic and Other Minorities) said that many Governments were reluctant to recognize that their countries were composed of diverse ethnic groups. They saw ethnicity as a threat to the territorial integrity of the State and claimed that the country's population was composed of a mono-ethnic homogeneous people sharing the same language, beliefs and culture. As a number of recent events had shown, that attitude gave rise either to discrimination or assimilation into more "advanced societies" or, elsewhere, to ethnocide and genocide. The case of Bangladesh was instructive in that respect. The Bangladesh authorities refused to recognize as indigenous peoples the 13 different tribes of the Chittagong Hill Tracts. The Government had even given them a collective name, the Jumma, to avoid distinguishing between them. The Jumma were victims of racial discrimination and their human rights and fundamental freedoms were violated, as had been documented by various United Nations bodies.

17. The conflict between the populations of Bougainville and Papua New Guinea was another example of discrimination against indigenous peoples. The island of Bougainville was subjected to an almost total blockade. The Government of Papua New Guinea continued to deny that the people of Bougainville constituted an indigenous population. Nevertheless, recent signs indicated that negotiations on the issue might begin soon. In his view, the resolutions adopted by the Sub-Commission and the Commission on Human Rights had had a significant effect. It was vital for international, national and regional stability that the distinct identity of separate populations living in the same nation-State should be recognized and protected.

18. The draft declaration was the first declaration on the rights of indigenous peoples and, as such, would have an immeasurable impact. The draft had, therefore, to be discussed at the next session of the Working Group so that participants could comment on the final version, before it was sent to the higher bodies. The declaration would be all the more valuable if the populations concerned had the opportunity to contribute to the drafting of the final version.

19. Mr. EIDE said that he wished, first of all, to add his voice to the concerns expressed by earlier speakers with regard to the plight of the Yanomamis. He hoped that the Sub-Commission would be kept informed of any measures that the Brazilian Government might take to find the assassins and to avoid, in the future, any recurrence of such incidents. In Guatemala, the situation of the Mayans remained precarious and, even though the Guatemalan Government had taken positive steps, the Sub-Commission should not let the matter rest.

20. The Working Group had obtained excellent results. It had afforded indigenous representatives an opportunity to participate in its work and had created conditions for dialogue between Governments of observer countries. In respect of the draft declaration, he welcomed the fact that due regard had been given to the principles of freedom and equality. With regard to self-determination, Ms. Daes and many indigenous representatives seemed to be stressing the fact that they were not necessarily advocating secession. The term "self-determination" was not necessarily the most appropriate. In reality, indigenous populations should have the right to contribute, on an equal basis, to the development of society as a whole. He hoped that the Sub-Commission could, through constructive debate, arrive at a new term which would better reflect the real concerns of the populations involved. As to adoption procedures, it was time for the Sub-Commission to hold a public debate on the draft declaration. He therefore endorsed the conclusions and recommendations contained in paragraph 210 of document E/CN.4/Sub.2/1993/29 to the effect that the Sub-Commission should consider the draft at its next session; request the Secretary-General to send it to the editorial and translation services and to circulate the text to indigenous peoples, and to Governments and intergovernmental and non-governmental organizations so that the latter could study it and inform the Sub-Commission of their views. He also supported the recommendation to the Commission on Human Rights and the Economic and Social Council to take the necessary measures so that indigenous peoples could participate fully, without need for consultative status, in the consideration of the draft declaration by the Sub-Commission, the Commission on Human Rights and other United Nations bodies.

21. For the future, the Working Group should continue its work and should be established as a permanent body, which could also set up mechanisms to monitor the implementation of the declaration and create a structure for dialogue between indigenous peoples, Governments and experts.

22. Mr. Yimer took the Chair.

23. Mr. ALFONSO MARTINEZ said that the draft declaration could not be expected to satisfy all concerned. The Working Group on Indigenous Populations had endeavoured to draft a text which would be generally acceptable without losing sight of the goal, which, like the raison d'être of the Working Group, was to deal with the problem of discrimination against indigenous peoples. The document had been discussed at length and many amendments, which were analysed in full in annex I, had been suggested. In its work, the Working Group had conformed strictly to the explicit instructions given to it by the Commission on Human Rights in paragraph 12 of its resolution 1993/30 and in paragraph 6 (a) of its resolution 1993/31.

The General Assembly had requested the Working Group to limit its work to the elaboration of the draft declaration while the Commission on Human Rights had made the instructions rather more flexible.

24. In his view, the text on which the members of the Working Group had agreed should be adopted formally, after which the Sub-Commission could be informed of the reactions of Governments and indigenous populations. A summary of those replies could be included in the Working Group's report to the Sub-Commission at its next session and could serve as a basis for its consideration of the matter. That was especially important because indigenous groups could participate more easily in the work of the Group than in that of the Sub-Commission, since any organization wishing to take part in the Sub-Commission's work had to be in consultative status with the Economic and Social Council.

25. He would point out that paragraph 210 of document E/CN.4/Sub.2/1993/29 did not represent the compromise reached, after consultations, by the members of the Working Group. As he had understood it, his views on that paragraph were to have been incorporated in the text following the conclusions and recommendations presented in that paragraph, which reflected only the majority opinion in the Working Group. At the suggestion of the editors, his views had been reflected in annex III. He thus wished to emphasize that paragraph 210 did not reflect his opinion.

26. It appeared from the final document of the Vienna Conference (A/CONF.157/23, (Part II)) that the Working Group on Indigenous Populations was requesting that its mandate should be renewed and updated. In fact, the Working Group did not have to request the renewal of its mandate, for the simple reason that the Economic and Social Council, in its resolution 1982/34, had not set any time-limit on the mandate. The Council obviously had the power to terminate the mandate if it so desired. As to the mandate's content, he was completely opposed to Mr. Eide's proposal to the effect that the Working Group should monitor the application by States of certain legal instruments or texts relating to the rights of indigenous peoples. The Working Group should, above all, continue to propose standards and to examine situations in the light of the promotion and protection of the rights of indigenous peoples, which certainly did not mean that another task could not be assigned to it.

27. Mr. CONDORI (Indian Council of South America) said that the draft declaration on the rights of indigenous peoples was the result of efforts by the Working Group on Indigenous Populations, indigenous delegations worldwide and the States Members of the United Nations. It should be made clear that it was not a declaration by indigenous peoples but rather a declaration of the Working Group. The text enumerated many of the fundamental rights that the European colonial countries and then national Governments had refused to grant to indigenous peoples. Those peoples must strive to make their voices heard in all organs of the United Nations, including the General Assembly, so that their aspirations would be reflected in the declaration, which should pave the way for a new alliance with States, as set forth in the document on the International Year of the World's Indigenous People.

28. In that connection, it seemed that owing to lack of resources it would not be possible to carry out all the activities planned for the International Year. It was, therefore, appropriate to declare a decade of indigenous peoples which would enable them to participate effectively in the execution of programmes for independent, sustainable and environmentally sound development. The massacres of the Yanomami Indians in Brazil and the Ashaninca community in Peru should spur the Sub-Commission to carry on its efforts for indigenous peoples throughout the world.

29. Ms. CHAVEZ said that she wished to pay tribute to the Working Group and its Chairperson, Ms. Daes, for their work, in particular on the draft declaration. The time had come for the Working Group to put the finishing touches to that text so that comments could be made on it.

30. Ms. GONZALEZ (Latin American Federation of Associations of Relatives of Disappeared Detainees) said that her organization fully endorsed the draft declaration elaborated by the Working Group, the report by Mr. Alfonso Martínez on treaties and the report by Ms. Ksentini on environment and human rights, which faithfully reflected the attitudes of indigenous peoples towards the environment and the earth.

31. Her organization hoped, as had the Vienna Conference, that the General Assembly would declare a Decade for indigenous peoples and cultures. It also hoped that the Sub-Commission would ensure that indigenous representatives could participate actively in the process of adopting the declaration and that the various United Nations bodies would recognize the right to self-determination of indigenous peoples.

32. As to the situation in Guatemala, three months after he had taken office, the new President, Mr. Ramiro de León Carpio, had already failed to fulfil most of the hopes that the population had placed in him. The civilian self-defence patrols, which committed many violations of human rights, had not been disbanded and the Army continued to engage in forcible recruitment, in particular from the Mayan population. It should be noted in that connection that the resolution adopted by the Sub-Commission did not reflect the truly grave situation of the Mayan people of Guatemala. A representative of the new Government had informed the Sub-Commission of the Guatemalan authorities' readiness to "preserve the heritage and the dignity of the Mayan people". It was to be hoped that the Government would keep its promise.

33. Mr. GAIASHKIBOS (Indian Law Resource Center) said that he was the President of the National Congress of American Indians, which had a membership of more than one million people. The savage murder of 70 Yanomamis by gold prospectors in Brazil was revolting and was a tragic illustration of the need to strengthen the protection of the rights of indigenous peoples, including the right to land and the right to life. The Brazilian Government must take the necessary measures.

34. The declaration on the rights of indigenous peoples should help to put an end to violations of those rights. In the United States of America, for instance, the Government could still take land away from Indians without due process of law and without compensation for the injured parties. That had recently happened to two Shoshone ranchers, Mary and Carrie Dann. For that

reason, his organization endorsed the recommendation to organize a seminar on the topic of indigenous land claims and demarcation of indigenous lands.

35. The draft declaration set out the basic rights of indigenous peoples that must be respected if they were to preserve their identities. Nevertheless, further dialogue was needed on a number of issues, such as the right of indigenous peoples to self-determination and to manage their natural resources. It was essential to take steps that would permit indigenous peoples to participate as actively as possible in the consideration of the draft declaration. Indeed, who better than indigenous peoples could discuss the human rights problems they faced?

36. Ms. KOY (The Saami Council) said that, since its establishment in 1982, the Working Group on Indigenous Populations had contributed substantially to preventing discrimination against indigenous peoples. As recommended by the World Conference on Human Rights, a permanent forum for indigenous peoples should be set up within the United Nations. In its present form, the Working Group would not be able to meet all the needs of indigenous peoples. The new permanent body, which could report to the Commission on Human Rights or the Economic and Social Council, should be authorized to monitor respect for the rights of indigenous peoples. It could also promote dialogue between indigenous peoples and Governments. There was also a need for a high commissioner for indigenous peoples and a convention on the rights of indigenous peoples. Lastly, the Sub-Commission should recommend that the Working Group on Indigenous Populations make consideration of the draft declaration a separate item on the agenda for its twelfth session.

37. Mr. COE (National Aboriginal and Islander Legal Services Secretariat (NAILLSS)) said he welcomed the fact that the draft declaration on the rights of indigenous peoples (E/CN.4/Sub.2/1993/26) recognized the right of those peoples to self-determination (para. 3) and to manage their lands, territories and resources (para. 24). However, it was regrettable that the right to self-determination had been limited. In fact, paragraph 29 stated that "indigenous peoples have the right to autonomy and self-government in matters relating to their internal and local affairs". The draft declaration should be more explicit and mention, for instance, the option of independence. While the Legal Services Secretariat was pleased that, as provided under paragraph 34, indigenous peoples had the right to observance of their treaties concluded with States, unfortunately States only had the possibility of bringing cases before the competent international bodies in the event of a dispute.

38. The Sub-Commission should ensure that indigenous peoples participated fully in the elaboration of the final version of the draft declaration. It was to be hoped that the obstacles would be overcome, that a genuine consensus would emerge, and that indigenous peoples would be able to make their voices heard. The debate in Australia following the High Court decision in the Mabo case underlined the need to adopt effective international standards. Indigenous peoples could only make sure of their survival if they were free to exercise their right to self-determination and to manage their lands and resources effectively.

39. Ms. LACOUR (International Federation Terre des Hommes) said that her organization felt a profound indignation and enormous sadness at the news of the odious massacre of 70 Yanomami Indians. That act had apparently stemmed from statements by parliamentarians and members of the military who, on the eve of the revision of the Constitution, were launching an onslaught of verbal genocide for the purpose of inciting anti-Indian sentiments. They claimed that protecting Indian lands might lead to the internationalization of the Amazon, which would thus be lost to national sovereignty. The military had most often turned a blind eye to the influx of prospectors into Indian territory, playing into the hands of the national and multinational mining companies which coveted the subsoil of Indian lands. The Brazilian Government was seriously implicated in the massacre. If it wished to maintain some credibility, it had to take the necessary steps to drive out the gold prospectors once and for all and promptly demarcate all the Indian lands in Brazil.

40. Unfortunately, Brazil was not the only country where indigenous peoples were being persecuted. In Colombia, for example, three indigenous leaders of the Arhuaco people had been kidnapped, tortured and then killed on 28 November 1990 by army officers, who had been found not guilty by the military court. On 16 December 1991, 20 indigenous Paeces had been killed. Two police officers implicated in the killings had also been exonerated. Indigenous peoples endured other forms of slow death through serious discrimination in health, education, justice and economic rights. In Ecuador, for example, only 30 per cent of the rural population, which was mainly indigenous, had access to health care. In Mexico, in certain indigenous communities, the infant mortality rate was twice as high as the national average, and a million indigenous persons had never been given the chance to learn the country's official national language. In Bolivia, 40,000 individuals had appropriated 93 per cent of the country's arable land and grazing, while many indigenous people went hungry. In Guatemala, indigenous peoples, who formed the majority of the population, were living under a veritable regime of apartheid.

41. In view of those situations, her organization urged the Sub-Commission to recommend to the United Nations that it should declare a Decade for indigenous peoples during which all States could demonstrate, by decisions and concrete acts, their determination to put an end to the physical, economic and socio-cultural genocide of those peoples; promote the adoption by the General Assembly of the universal declaration on the rights of indigenous peoples; urge in the most vigorous terms the Brazilian Government, as well as any other Government concerned by the massacre of indigenous peoples in their countries, take effective measures to stop such crimes and bring the perpetrators and instigators to justice; and support the establishment, as soon as possible, of a working group on the right to development mandated to set up a permanent mechanism to receive information and to evaluate progress made in the economic, social and cultural rights of the most vulnerable populations, including indigenous peoples.

42. Ms. GALVIS (Observer for Colombia) said that she wished to thank the Working Group on Indigenous Populations and its Chairperson, Ms. Daes, for the enormcus amount of work they had done, in particular on the elaboration of the draft declaration on the rights of indigenous peoples. Eight months after the

start of the International Year of the World's Indigenous People, it was clear that the international community had become aware of the demands of those populations. It was to be hoped that the objectives identified for the International Year, at both the national and international level, would be achieved and that the event would contribute to the harmonious development of indigenous peoples, with respect for their cultures and their autonomy.

43. Colombia had taken institutional measures so that indigenous peoples could play a fuller part in the decisions concerning them, fully exercise their rights, and affirm their cultural identity. Accordingly, in conjunction with Venezuela, it had conducted a census of the Guayu Indians, who lived on either side of the two borders, so that steps could be taken to preserve the community's cultural, social and territorial cohesion. A general census of the population would also be carried out at the national level in October 1993, and should help to determine the needs of the indigenous populations and to establish an appropriate development programme in accordance with the goals set within the framework of the International Year of the World's Indigenous People.

44. Colombia attached great importance to the draft declaration on the rights of indigenous peoples and hoped that it would reflect a balance between the priority needs of indigenous peoples and States' capabilities. In that respect, some aspects of the declaration would undoubtedly give rise to intensive negotiations. It was vital to arrive at a compromise so that the text would be universally acceptable and could be implemented in practice. In conclusion, much remained to be done with regard to freedom of expression for indigenous peoples. The World Conference on Human Rights had therefore recommended that a decade for indigenous peoples should be proclaimed. The Working Group on Indigenous Populations, which was the intermediary through which those groups could express their views, must also continue its work.

45. Mr. PINTA GAMA (Observer for Brazil) said that he wished to pay tribute to Ms. Daes and the entire Working Group on Indigenous Populations, whose report (E/CN.4/Sub.2/1993/29) dealt with highly complex issues. The Brazilian delegation had participated actively, as an observer, in the Group's deliberations since it had been established. Brazil had always supported the idea of a draft declaration on the rights of indigenous peoples as a new instrument for promoting and protecting the human rights and fundamental freedoms of indigenous peoples. It had expressed on several occasions the hope that the Working Group would elaborate a concise, balanced and realistic text. To be acceptable, the draft declaration had to take into account a certain number of factors, and in particular the wide diversity of living conditions of the various indigenous communities in the world and their different degrees of economic and social development. Furthermore, the rights enshrined in the declaration should not be in conflict with the rights of all individuals under international human rights law.

46. The draft declaration before the Sub-Commission was the result of nine years of intense consultations. It included a large number of valuable articles, for example those relating to the preservation of the cultural identity and traditions of indigenous populations and to the development of their economic structures and traditional ways of life. However, there were others which gave rise to difficulties and which many Governments, including

his own, would have difficulty in accepting. He cited in particular the article under which indigenous populations could invoke the right to self-determination, as defined by international law. Not enough careful reflection had gone into the drafting of that provision, which was based on concepts which were not, in their present formulation, consistent with constitutional law or with international law. In that connection, the concepts of "peoples" and the "right to self-determination", as defined in article 1 of the International Covenant on Civil and Political Rights and article 1 of the International Covenant on Economic, Social and Cultural Rights, were ambiguous and might lead to interpretations which were incompatible with international law or with the principles and purposes of the Charter of the United Nations and the basic principles of State sovereignty and territorial integrity. Those provisions might in fact be interpreted as recognizing indigenous communities as subjects of international law and thus exempting them from the jurisdiction of the State in which they lived. Further clarification was also needed of the concepts of autonomy and self-government.

47. He also had reservations with regard to other issues in the draft declaration, including the use of "land, territories and resources" when "lands and natural resources" provided a better reflection of the diversity of situations and the various land tenure regimes. Demilitarization of indigenous lands, the prohibition on removing indigenous groups from their lands, and the access of indigenous people to procedures for the resolution of disputes with States were complex issues that required further study. In addition, the articles which were designed to ensure indigenous people access to international cooperation for protection of their environment and improvement of their productive capacity did not adequately reflect the role that must be played by the State in that field.

48. Those concerns were not particular to Brazil, but were shared by other Governments. He hoped that the Sub-Commission would take those observations into account during its consideration of the draft declaration. Again, the final version to be adopted by the General Assembly should reflect a balance between the aspirations of indigenous people and the concerns of Governments.

49. As to the incident involving the massacre by gold prospectors of members of the Yanomami community, President Itamar Franco had himself called upon the competent authorities to carry out a thorough investigation with a view to elucidating the facts and bring those responsible to justice. The Minister of Justice and the President of FUNAI (National Indigenous Foundation) had visited the remote State of Roraima in order to adopt the necessary measures. Furthermore, the National Defence Council had held a plenary meeting to consider the matter. President Itamar Franco had also decided, on the recommendation of the Council, to establish the Amazon Protection System (SIPAM) and to appoint a Minister-Extraordinary to coordinate action in the Amazon region. Aware of the need to protect the Yanomamis, in 1992 the Government had demarcated a territory of approximately 96,000 square kilometres and had created a special health care programme for them, with the participation of non-governmental organizations and universities, to provide emergency assistance to a particularly vulnerable community. However, the Yanomamis still faced invasions of gold prospectors and the diseases they brought with them. The incident was deplorable, but he would, nevertheless

point out that those rich lands were being invaded by poor people from the hinterlands who were trying to escape from their own plight: it was a structural problem that could only be resolved by long-term solutions aimed at eradicating the root causes.

50. Despite those difficulties, the overall situation of indigenous people in Brazil demonstrated that the Federal Government and Brazilian society were committed to promoting the welfare of indigenous people and to protecting their human rights and fundamental freedoms. In spite of economic difficulties affecting all sectors of society, the Federal Government was doing its utmost to implement special policies aimed at guaranteeing for indigenous people land rights, self-sustaining community life, and preservation of their cultures, languages and traditions, as well as their participation in decision-making processes in matters of concern to them.

51. Mr. DUBOIS (Observer for Canada) said that he wished to thank the members of the Working Group, who had contributed so much to the elaboration of the draft declaration on the rights of indigenous peoples. The Working Group's task was complete now that the Sub-Commission would be considering the text, which required careful study. He hoped that the Working Group's report would include the observations of Canada, which had played an active role in the debates. The Canadian Government had actively encouraged the presence of indigenous peoples at the World Conference on Human Rights and it supported various proposals designed to strengthen dialogue among all the parties concerned. Canada had a policy of actively promoting the rights of indigenous populations within the framework of the State, and in conformity with international human rights instruments. It endorsed the principle that indigenous peoples had the right to self-determination, but within the framework of the nation-State. He stressed that indigenous populations had the right to autonomy with regard to questions that concerned them directly, but that such autonomy was to be exercised within the jurisdiction of the State. It was, therefore, particularly important to use very clear language in the draft declaration, in particular when dealing with the concepts of self-determination, autonomy, and self-government, the scope of which was not entirely clear from the present wording of the text. It would perhaps be appropriate to group together all the draft articles dealing with those concepts.

52. While he welcomed the report of the Working Group, he considered it should be examined in context, rather than in the abstract. Mr. Eide's report on the protection of minorities (E/CN.4/Sub.2/1993/34) contained a careful analysis of the problems raised by the question of minorities and an instructive discussion of the concepts of "self-determination" and "people". The Commission on Human Rights should consider the draft declaration as soon as possible; at the same time, the members of the Sub-Commission, as experts on the matter, must study the draft carefully and decide whether to adopt it before it was submitted to the Commission.

53. Mr. VILLANUEVA (Observer for Bolivia) said that Bolivia was following with particular interest the work of the Working Group on Indigenous Populations and particularly the draft declaration, which, once adopted, would be an important step in the evolution of the rights of those peoples. Bolivia had launched some important initiatives for its indigenous populations. At

the same time as Mr. Sánchez de Lozada had become President of the Republic, an indigenous leader, Mr. Cárdenas Conde, head of the Indian political movement Tupaj Katari, had become Vice-President, something which demonstrated the successful integration of indigenous populations in Bolivia, the representative and pluralist nature of Bolivian society, the respect for the rights of indigenous populations, and the awareness of the need to share responsibility. That progress was confirmed by other events, including the creation of a development fund for indigenous peoples, the incorporation of International Labour Organisation Convention No. 169 into Bolivian legislation and the official recognition of indigenous languages. Those developments reflected the genuinely multi-ethnic and pluricultural nature of Bolivian society which promoted "unity in diversity".

54. Ms. DAES said she wished to pay tribute to her colleagues in the Working Group on Indigenous Populations, to the representative of Governments who had participated in its work and, above all, to the indigenous peoples themselves. She would always defend the right of indigenous populations to participate fully not only in the work of the Working Group, but also in that of the Sub-Commission and the Commission and she would spare no effort to ensure such participation.

55. Admittedly, some articles in the draft declaration did not reflect the views of Governments, but the draft declaration was a declaration by indigenous peoples, who had waited for it a long time: they needed the declaration so that their rights could be recognized, protected and safeguarded. Accordingly, she had made every effort to take into consideration the views of Governments and, with regard to the articles on self-determination, the principles and rules of international law. The Rapporteur of the Working Group was not required to transmit the Group's report to Governments, but she had always done so as a means of aiding Governments in their task. Some Governments had submitted their comments by the 19 August deadline; the comments of the Canadian Government had only arrived at the Centre for Human Rights on 21 August. As she had explained to the observer for Canada, it might be possible to issue a supplement which would contain his Government's comments; however it would be best for Governments to respect the deadlines set.

56. The CHAIRMAN said that the Sub-Commission had completed its general debate on agenda item 14.

The meeting was suspended at 6.20 p.m.